83-1090

No.

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1983

THE PAINTERS AND DECORATORS JOINT COMMITTEE EAST BAY COUNTIES, INC.
Petitioner,

VS.

THE PAINTING AND DECORATING CONTRACTORS OF SACRAMENTO, INC., a California non-profit corporation,
Respondent.

Petition For Writ of Certiorari To The United States Court of Appeals For The Ninth Circuit

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Question Presented.

Whether a District Court has jurisdiction to enjoin a joint labor-management committee acting in an ajudicatory function under the provisions of 29 U.S.C. Section 185, which provides that district courts may enforce collective bargaining agreements where the joint labor-management committee is not a party to the agreement?

Parties Below and Affiliates of Appellant

Pursuant to Supreme Court Rule 28.1, Petitioner states that although a corporation there are no parent companies, subsidiaries or affiliates.

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No.

In the Supreme Court
of the
United States

October Term, 1983

Painters and Decorators Committee of the
East Bay Counties, Inc.
Petitioner,

vs.

The Painting and Decorating Contractors
Association of Sacramento, Inc., a
California non-profit corporation,
Respondent.

Petition for Writ of Certiorari To The
United States Court of Appeals For the
Ninth Circuit

The Painters and Decorators Joint Committee of the East Bay Counties, Inc. (hereinafter "Joint Committee") respectfully prays that a Writ of Certiorari issued to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding.

I

OPINIONS BELOW

The opinion of the Court of Appeals (Appendix A) is reported at 707 F.2d 1067. That Court's order denying Petitioner's petition for rehearing and rejecting Petitioner's suggestion for a rehearing en banc and reprinted as Appendix B is reported at 717 F.2d 1293. The preliminary injunction from which the appeal was taken is Appendix C.

II

JURISDICTION

The opinion of the Court of Appeals of the Ninth Circuit was entered on June 8, 1983, and a timely petition for rehearing and suggestion for a hearing en banc

was filed on June 22, 1983. On October 4, 1983, the petition for rehearing was denied and the suggestion for a rehearing en banc was rejected. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 (1). This Petition is timely filed with this Court under 28 U.S.C. Section 2101 (c).

III

STATUTORY PROVISIONS

The relevant statutory provision is 29 U.S.C. Section 185 which provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the

parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

IV

STATEMENT OF THE CASE

The underlying dispute concerns the interpretation of a collective bargaining agreement covering painting and decorating contractors in ten counties of California between a union: The District Council of Painters No. 16 and two multi-employer associations: The Painting and Decorating Contractors Association of Napa-Solano Counties, Inc. and the Painting and Decorating Contractors Association of the East Bay Counties, Inc. The dispute concerning that agreement arose when a group of contractors in Sacramento formed a rump association known as the Painting and Decorating Contractors Association of Sacramento, Inc., which withdrew its affiliation from the employer association known as the Painting and Decorating

Contractors of California, Inc. As a result of this inter-employer dispute, the two multi-employer associations took the position that the Sacramento rump group was not recognized under the contract as a "member signatory" contractor, thus requiring each of the contractors who were members of that rump group to pay additional fees in order to maintain a shop card which entitles the contractor to advertise that he is union and to employ union members.

As a result of this dispute, the Petitioner, the Painters and Decorators Joint Committee of the East Bay Counties, Inc., was asked to declare the Sacramento Contractors (numbering slightly less than 40) as "non-member signatory" contractors, which would trigger certain provisions of the contract requiring the payment of substantially increased shop card fees.

As a result of this action, the Sacramento "rump group" sought an injunction against the Joint Committee from ajudicating the Sacramento rump

group as "non-member signatory." Injunctive relief was also sought against the contractor associations, although no injunctive relief was sought against the union, District Council No. 16. 1/ The Complaint also sought declaratory relief as well as other forms of relief. The District Court issued an injunction restraining the Joint Committee from imposing the "non-member signatory" fee upon the Sacramento rump group members. In addition, the District Court restrained the Joint Committee from removing the two individuals who sat on the Joint Committee as delegates of the Sacramento group.

The Joint Committee, consisting of equal representatives of labor and management, appealed to the Court of Appeals which held that it had jurisdiction over the Joint Committee and otherwise sustained the issuance of injunctive relief.

This case, therefore, presents a

1/ Any such relief would have been prohibited by the terms of 29 U.S.C. 104.

sharply defined legal issue. Under the circumstances of this case, the Joint Labor Management Committee was acting as an ajudicatory body just like an arbitration panel. It was requested by the multi-employer associations to determine that the Sacramento rump group was required to pay an additional "non-member signatory" fee, which action the District Court restrained. The question before this Court is whether such a joint committee, which is not a party to the collective bargaining agreement but which is created by the agreement, may be the subject of the District Court's jurisdiction under 29 U.S.C. Section 185.

V

REASON WHY THIS PETITION SHOULD BE GRANTED

This Court has developed a substantial body of law favoring the grievance and arbitration process in collective bargaining agreements. See W. R. Grace v. Local Union 759 Rubberworkers, ____ U.S.____ (1983). This Court, has

therefore prohibited the courts from interfering in that grievance and arbitration process. As a corollary, this Court has recognized that joint labor management committees are an intregal part of that process and affirmed that their decisions were no different and no less enforceable than decisions of sole arbitrators. See, Teamsters v. Riss & Co., 372 U.S. 517 (1963). Since that date, the Courts of Appeal have never been troubled by enforcing the decisons of such joint committees. See, e.g. Brotherhood of Teamsters, Local 70 v. The Celotex Corporation, 708 F.2d 488 (9th Cir. 1983). See also, Hines v. Anchor Motor Freight, Inc., 424 U.S. 554, 558-559 (1976) and Humphrey v. Moore, 375 U.S. 335 (1964).

It is thus fair to say that such joint labor management committees are now an essential part of the process of grievance resolution under collective bargaining agreements.

On the other hand, this Court has

always read Section 185 broadly and permitted parties to agreements to enforce them in the District Courts. See e.g. Automobile Workers v. Hoosier Cardinal Corp., 383 U.S. 696 (1966) (union); Drake Bakeries, Inc. v. Bakery and Confectionery Workers, 370 U.S. 254 (1962) (employer); Carbon Fuel Co. v. Mine Workers, 444 U.S. 212, (1979) (international union) and Smith v. Evening News Association, 371 U.S. 195 (1962) (individual). Jurisdiction under this section has been extended to other parties to such contracts. See Cf. Plumbers & Pipefitters v. Local 334, 452 U.S. 615 (1981).

On the other hand, this Court has not extended the jurisdiction of Section 185 to suits brought by entities which are not parties to such written agreements. Presented in this case is the question whether a non-party which serves as an ajudicatory function and which is created by the collective bargaining agreement may be subject to a court's jurisdiction.

The court below held that jurisdiction could be asserted over the Joint Labor Management Committee, noting, however, that "(o)ther courts have interpreted Section 301 (a) jurisdiction to be limited to the actual signatories to the contract at issue". Indeed, the Ninth Circuit was correct that at least two other circuits have expressly ruled that such joint labor-management committees are not subject to a District Court's jurisdiction. See Ramsey v. Signal Delivery Service, Inc., 631 F.2d 1210, 1212 (5th Cir. 1980) and Teamsters Local 30 v. Helms Express, Inc., 591 F.2d 211, 217 (3rd Cir. 1979), cert den., 444 U.S. 837 (1979). And other circuits have declined to assert jurisdiction over entities which are not parties to the written agreement. See Loss v. Blankenship, 673 F.2d 942, 946 (7th Cir. 1982); Carpenters Local Union No. 1846 v. Pratt-Farnsworth, Inc., 690 F.2d 489, 500-02 (5th Cir. 1982), cert den., ____ U.S. ____ (1983). See also other cases cited at note 3 of

Appendix A.

It is only the Ninth Circuit which has broadened Section 185 to include non-parties and broadened it to those entities which serve the arbitral function. We only note the havoc which such a rule can create in circumstances where the arbitrator (or joint committee) is dragged into disputes between labor and management where it serves a position of interpreting or applying the agreement. See also International Union, U.A.W. v. Greyhound Lines, Inc., 701 F.2d 1181 (8th Cir. 1983) (quasi-judicial immunity for arbitrator).

For these reasons, the question is of substantial importance to the role which such joint labor-management committees may play in the resolution of contractual disputes and in furtherance of the national labor policy. Moreover, the issue is related to a question now pending before this Court in Robbins v. Prosser's Moving and Storage Co., 700 F.2d 433 (8th Cir. 1983) (en banc), cert granted, ____ U.S. ____ (1983),

which concerns the question of whether trustees which are not parties to a collective bargaining agreement must exhaust the grievance procedure in the contract before suing to collect trust fund contributions.

VI

CONCLUSION

The decision of the Court below has created a square conflict with the decision of other circuits with respect to the power of a District Court to assert jurisdiction over a joint labor management committee. It is an issue of importance and this Petition for Writ of Certiorari should be granted.

Dated: December 21, 1983

Respectfully submitted,

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Attorneys for Petitioner

APPENDIX A

FILED
June 8, 1983
PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PAINTING AND DECORATING CONTRACTORS ASSOCIATION OF SACRAMENTO, INC., a California non-profit corporation,	)	No. 82-4469
Plaintiff-Appellee,	)	DC No. C-82-3077 WAI
v.	)	
PAINTERS AND DECORATORS COMMITTEE OF THE EAST BAY COUNTIES, INC., a California non-profit corporation; PAINTING AND DECORATING CONTRACTORS OF CALIFORNIA, INC.,	)	OPINION

a California)
non-profit)
corporation;)
PAINTING AND)
DECORATING)
CONTRACTORS)
ASSOCIATION OF)
NAPA-SOLANO)
COUNTIES, INC.,)
a California)
non-profit)
corporation;)
PAINTING AND)
DECORATING)
CONTRACTORS)
ASSOCIATION OF)
THE EAST BAY)
COUNTIES, INC., a)
California)
non-profit)
corporation; and)
DISTRICT COUNCIL)
OF PAINTERS NO.)
16, an)
unincorporated)
labor)
organization,)
)
Defendants-)
Appellants.)
)
_____)

Appeal from the United States District Court for the Northern District of California

Honorable William A. Ingram, District Judge, Presiding

Argued February 16, 1983
Submitted February 25, 1983

Before: MERRILL, CHOY and ALARCON, Circuit Judges.

CHOY, Circuit Judge:

In this appeal from the grant of a preliminary injunction, we are faced with the question of whether a non-signatory to a collective bargaining agreement is a proper party to a suit brought under Section 301(a) of the Labor Management Relations Act. We conclude it is and affirm the order of the district court granting the preliminary injuction.

I. Facts and Proceeding Below

Plaintiff-appellee, Painting and Decorating Contractors Association of Sacramento ("Sacramento Association") is a multi-employer trade group consisting of painting and decorating contractors in a six-county area of Northern California.

The Sacramento Assocation, along with two other multi-employer trade groups, the Painting and Decorating Contractors Association of Napa-Solano Counties, Inc.("Napa-Solano Association") and the Painting and Decorating Contractors of the East Bay Counties, Inc. ("East Bay Association"), is signatory to a collective bargaining agreement ("Agreement") with the District Council of Painters No. 16 ("District Council), which is a labor organization composed of several local unions within the California counties covered by the Agreement. The employer-members of the Sacramento Association are parties to the Agreement by virtue of their membership in the association.

The Agreement provides for the establishment of a Joint Committee (formally, Painters and Decorators Joint Committee of the East Bay Counties, Inc.) to administer and enforce the Agreement. The Joint Committee is a California non-profit corporation consisting of two representatives from each of the three

signatory employer associations and representatives from the District Council. The Joint Committee's duties and responsibilities are delineated in the Agreement. One of the primary functions of the Joint Committee is to issue Shop Cards to employers indicating that the employer is a party to the Agreement and is thus observing the terms and conditions of the Agreement. The District Council will not provide labor for any employer who does not have a Shop Card.

Employers who are members of one of the three signatory assocations are considered "member signatories" for purposes of receiving a Shop Card and are charged $50 per year for their Shop Card. However, the Agreement allows employers who are not members of one of three signatory associations to become parties to the Agreement and to obtain a Shop Card. Such employers are designated by the Agreement as "non-member signatories" and in order to obtain a Shop Card must sign a copy of the Agremeent and pay the

Shop Card fee of $50 per year plus the equivalent amount of yearly chapter dues paid by members of the Painting and Decorating Contractors Association1/ in the area in which the employer does business.

On January 22, 1982, the Sacramento Association withdrew its membership from the state (Painting and Decorating Contractors of California ("PDCC") and the national (Painting and Decorating Contractors of America ("PDCA")) chapters of the Painting and Decorating Contractors Association. The reason for the withdrawal was to avoid paying the annual membership fees of these organizations. By withdrawing, the Sacramento Association would be able to save $240 per member in yearly fees.

On April 28, 1982, each member of the Sacramento Association was informed by the PDCC that he would be considered a non-member signatory if he did not (1) rescind his withdrawal from the PDCC and the PDCA, or (2) join the Napa-Solano Association, whose jurisdiction had been

expanded to cover the territory formerly governed by the Sacramento Association. The Joint Committee accepted the position of the PDCC.

As non-member signatories, members of the Sacramento Association would have to pay an additional $700 in yearly Shop Card fees on the renewal date of June 30, 1982. Additionally, representatives from the Sacramento Association were denied access to the April meeting of the Joint Committee.

On June 15, 1982, the Sacramento Association filed suit in district court under Section 301 of the Labor Management Relations Act, 29 U.S.C. Section 185, naming the Joint Committee, the District Council, the Napa-Solano Association, the East Bay Association and the PDCC as defendants. The gravamen of the complaint is that there is nothing in the Agreement which conditions member-signatory status on being affiliated with the PDCC and that the defendants breached the Agreement by classifying the Sacramento Association

employers as non-member signatories upon their withdrawal from the PDCC and the PDCA.

The Sacramento Assocation sought relief in the form of a preliminary and permanent injunction prohibiting the Joint Committee from (1) refusing to allow the Sacramento Association delegates to sit and participate as voting members in the Joint Committee's meetings; (2) refusing to renew the shop Cards of the employer-members of the Sacramento Association upon payment of $50 from each member; and (3) threatening to take any action to disqualify the Shop Card of any employer-member of the Sacramento Association. They also sought to enjoin the PDCC and the Napa-Solano Association from attempting to induce members of the Sacramento Assocaition to drop their membership in the Sacramento Association and to affiliate with the Napa-Solano Association on the basis that if they failed to do so, they would be considered non-member signatories.

The district court granted the

preliminary injunction ulpon conlcuding that the Sacramento Association was likely to prevail on the merits, and the balance of hardships tipped in favor of the Sacramento Association because the Sacramento Association and its employer-members would be threatened with immediate and irreparable injury and economic loss if the injunction was not granted. The Joint Committee and the District Council appeal the grant of the preliminary injunction contending that the district court erred in its determination that: (1) the instant case is not a labor dispute within the meaning of the Norris-La Guardia Act, 29 U.S.C. Section 101, et seq.; (2) there is no mandatory grievance procedure contained in the Agreement to be exhausted before the case can come to court; and (3) preliminary injunction was not granted.

We noted appellate jurisdiction under 28 U.S.C. Section 1292(a)(1) and affirm the district court's findings and order in all respects on the basis of its

reasoning as stated above. However, we feel that the issue of jurisdiction over the joint Committee under Section 301 needs explication.

II. Section 301 Jurisdiction

Section 301(a) of the Labor Management Relations Act, 29 U.S.C. Section 185(a), provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to citizenship of the parties.

To assert jurisdiction under Section 301(a), a litigant must allege a breach of a contract beween an employer and a labor organization or between labor organizations in an industry affecting commerce. There is no question that the jurisdictional requirements of Section 301(a) have been met with respect to the District council, the Napa-Solano Assocaition and the East Bay Assocaition, since the suit is based on an alleged breach of contract bween an employer and a labor organization in an industry affecting commerce, and they are all signatories to the agreement. However, there is some uncertainty as to Section 301(a) jurisdiction over the Joint Committee because it is not signatory to the Agreement.2/ Other courts have interpreted Section 301(a) jurisdction to be limited to the actual signatories to the contract at issue.3/ However, we do not give Section 301(a) such a reading.

Section 301 is to be gien a broad interpretation. Smith v. Evening News

Association, 371 U.S. 195, 199 (1962). The fact that the Joint Committee is not a party to the Agreement is immaterial. Section 301(a) does not contain any requirment that the parties to an action brought thereunder must also be the parties to the allegedly breached contract. As this court has stated:

> Section 301 jurisdiction is not dependent upon the parties to the suit but rather the nature or subject matter of the action. Jurisdiction exists as long as the suit is for violation of a contract between a union and employer even if neither party is a union or an employer.

Rehmar v. Smith, 555 F.2d 1362, 1366 (9th Cir. 1976); see Stelling v. International Brotherhood of Electrical Workrs, 587 F.2d 1379, 1383 (9th Cir. 1978), cert. denied, 442 U.S. 944 (1979), Alvares v. Erickson, 514 F.2d

156, 162 (9th Cir.), cert. denied, 423 U.S. 874 (1975); Peggs Run Coal Co. v. District 5, UMW, 338 F. Supp. 1275, 1276 (W.D. Penn. 1972), aff'd mem., 500 F.2d 1400 (3d Cir. 1974).

All that is required for jurisdiction to be proper under Section 301(a) is that the suit be based on an alleged breach of contract between an employer and a labor organization and that the resolution of the lawsuit be focused upon and governed by the terms of the contract. See Castenada v. Dura-Vent Corp., 648 F.2d 612, 616 (9th Cir. 1981). Here, there is no argument that the suit is based on an alleged breach of contract between an employer and a labor organization. Furthermore, the adjudication of this case, and the Joint Committee's liability in particular, hinges on the interpretation of the Agremeent (i.e., whether member-signatory status is conditioned on affiliation with the PDCC). Consequently, there is clearly Section 301(a) jurisdiction over the Joint

Committee even though it is not signatory to the Agreement since the requirements of Sedion 301(a) have been met.

To exclude the Joint Committee from federal court and thus force the Sacramento Association to pursue its claim against the Joint Committee in state court would be contrary to the policy underlying Sectgion 301. That policy is to promote industrial peace by permitting agreements between labor organizations and employers to be enforced in federal court. Textile Workers Union of America v. Lincoln Mills, 353 U.S. 448, 455 (1957). Collective bargaining agreements must be interpreted and enforced in a uniform manner to accomplish such a policy. Seymour v. Hull & Moreland Engining, 605 F.2d 1105, 1109 (9th Cir. 1979). As the Sacramento Association points out, it is possible that the district court could interpret the Agreement one way and a state court could interpret it a different way with respect to the Joint Committee, even though the same factual

setting were before both courts. "The possibility that individual contract terms might have different meanings under state and fedral law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements." Local 1743, Teamsters v. Lucas Flour Co., 369 U.S. 95, 103 (1962). For public policy reasons, then, inclusion of the Joint Committee in this action is essential.

To reiterate, Section 301(a) is a basis for jurisdiction when the suit is based on a colorable claim of breach of contract4/ between an employer and a labor organization in an industry affecting commerce and the resolution of the lawsuit is focused upon and governed by the terms of the contract.

The jurisdictional requisites of Section 301(a) having been satisfied with respect to the Joint Committee, it is a proper party to this action. The findings and order of the district court are AFFIRMED.

FOOTNOTES

1. The Painting and Decorating Contractors Association is a national trade organization of painting and decorating contractors. It is an entity separate from the three signatory employer assocations and is not a party to the Agreement.

2. The Joint Committee probably is not an employer or a labor organization under the Labor Management Relations Act either. We need not rule on that point, however, because it is well settled that parties in a Section 301 action do not necessarily have to be employers or labor organizations. The word "between" in Section 301(a) refers to "contracts between an employer and a labor organization, not to "suits" between them. Smith v. Evening News Ass'n, 371 U.S. 195, 200 (1962); Stelling v. International Bhd. of Electrical Workers, 587 F.2d 1379, 1383 (9th Cir. 1978), cert. denied, 442 U.S. 944 (1979).

3. E.g., Carpenters Local Union No. 1846, etc. v. Pratt-Farnsworth, Inc, 690 F.2d. 489, 500-502 (5th Cir. 1982), petition for cert. filed, 51 U.S.L.W. 3651 (U.S. Feb. 22, 1983) (No. 82-1414);

Loss v. Blakenship, 673 F.2d 942, 946 (7th Cir. 1982); Ramsey v. Signal Delivery Service, Inc., 631 F.2d 1210, 1212 ((5th Cir. 1980); Teamsters Local Union No. 30 v. Helms Express, Inc., 591 F.2d 211, 217 (3d Cir.), cert. denied, 444 U.S. 837 (1979); Baker v. Fleet Maintenance, Inc., 409 F.2d 551, 554 (7th Cir. 1969); Bowers v. Ulpiano Casal, Inc., 393 F.2d 421, 423 (1st Cir. 1968); Fox v. Mitchell Transport, Inc., 506 F. Supp. 1346, 1349 (D. Md.), aff'd mem., 671 F.2d 498 (4th Cir. 1981); Fabian v. Freight Drivers & Helpers Local No. 557, 448 F. Supp. 835, 838 (D. Md. 1978).

Despite some broad language in those cases stating that non-signatories to the allegedly breached contract are never appropriate parties to Section 301(a) action, the non-signatory parties there were not dismissed because the determination of their liability was not focused upon nor governed by the terms of the cotract alleged to have been breached, a jurisdictional prerequisite of Section 301(a). Here, since the question of the Joint Committees liabiity is to be determined by the district court's interpretations of the Agreement, the present case is clearly factually distinguishable from the cases cited above, and thus the reasoning behind those decisions is inapposite.

4. The contract need not be a collective bargaining agreement as long as it is an "agreement between employers and labor organizations significant to the maintenance of labor peace between

them." Retail Clerks International Ass'n v. Lion Dry Goods, Inc., 369 U.S. 17, 28 (1962). Cf. District 2 Marine Engineers Beneficial Ass'n v. Grand Bassa Tankers, Inc., 663 F.2d 392, 401 (2d Cir. 1981) (contract must not only promote labor peace but must also be between an employer and its employees).

APPENDIX B

FILED
OCT 4 1983
PHILLIP B. WINBERRY
CLERK, U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PAINTING AND DECORATING CONTRACTORS ASSOCIATION OF SACRAMENTO, INC., a California non-profit corporation,	)	No. 82-4469
Plaintiff-Appellee,	)	
v.	)	
PAINTERS AND DECORATORS COMMITTEE OF THE EAST BAY COUNTIES, INC., a California non-profit corporation; PAINTING AND DECORATING	)	ORDER (For publication)

CONTRACTORS OF CALIFORNIA, INC., a California non-profit corporation; PAINTING AND DECORATING CONTRACTORS ASSOCIATION OF NAPA-SOLANO COUNTIES, INC., a California non-profit corporation; PAINTING AND DECORATING CONTRACTORS ASSOCIATION OF THE EAST BAY COUNTIES, INC., a California non-profit corporation; and DISTRICT COUNCIL OF PAINTERS NO. 16, an unincorporated labor organization,

Defendants-Appellants.

Before: MERRILL, CHOY and ALARCON, Circuit Judges.

In our Opinion in this case, 707

F.2d 1067, we held that the lower court properly had jurisdiction over a nonsignatory to a labor agreement under Section 301(a) of the Lbor Management relations Act of 1947 ("LMRA"), 29 U.S.C. Section 185(a). We stated, "All that is required for jurisdiction to be proper under Section 301(a) is that that suit be based on an alleged breach of contract between an employer and a labor organization and that the resolution of the lawsuit be focused upon and governed by the terms of the contract." 707 F. 2d at 1071. We further held that the lower court was not precluded by the Norris-La Guardia Act, 29 U.S.C. Sections 101-115, from issuing an injunction in this dispute, since the conflict is not a "labor dispute" within the meaning of that Act. 707 F.2d at 1070.

In its petition for rehearing, appeallant Joint Committee argues that the two holdings noted above are irreconcilable. The Joint Committee maintains that Section 301(a) jurisdiction is limited to "labor

disputes." Although Section 301(a) is not so limited by its terms,1/ it was enacted as part of the same Act that elsewhere defined "labor dispute" in the same language as Norris-La Guardia. Compare LMRA Sections 101(9), 501(3), 29 U.S.C. Sections 142(3),152(9) with Norris-La Guardia Section 13(c), 29 U.S.C. Section 113(c).

Interestingly, we have found no case that specifically addresses the

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1/ Section 301(a), 29 U.S.C. Section 185(a), reads:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

point raised by the Joint Committee. Three cases, two from our court and one from the Second Circuit, have held that Section 301(a) gave jurisdiction to issue an injunction where the conduct to be enjoined was not among the specific acts listed in Section 4 of Norris-LaGuardia, 29 U.S.C. Section 104, and where the injunction would not be at variance with the policy expressed by Norris-La Guardia. Local 2750, Lumber & Sawmill Workers Union v. Cole, 663 F.2d 983 (9th Cir. 1981); Retail Clerks Union Local 1222 v. Alfred M. Lewis, Inc., 327 F.2d 442, 446-48 (9th Cir. 1964); Drywall Tapers and Pointers, Local 1974 vs. Operative Plasterers' and Cement Masons' International Association, 537 F.2d 669, 673-74 (2d Cir. 1976). None of these cases held that the litigation before it was not a "labor dispute" as defined by Norris-La Guardia, although the Alfred M. Lewis court did state that its case was a "labor dispute" "only in the most refined and technical sense." 327 F.2d at 448. One district court

specifically found Section 301(a) jurisdiction in the absence of a "labor dispute," but did not discuss any possible conflict between those two holdings. United Brotherhood of Carpenters & Joiners of America v. Albany, Schenectady, Troy & Vicinity District Counsel (sic), 553 F. Supp. 55, 58 n.4 (N.D.N.Y. 1982).

The proper response to the Joint Committee's argument is simply that it is a non sequitur. The Norris-La Guardia Act and Section 301(a) play distinct and separate roles in national labor policy. The Norris-La Guardia Act was enacted to remedy the indiscriminate use of injunctions as a means of disrupting the organization and progress of labor unions. See Boys Markets, Inc. v. Retail Clerks Union, Local 770, 398 U.S. 235, 250-51 (1970); Alfred M. Lewis, 327 F.2d at 447; F. Frankfurter & N. Greene, The Labor Injunction (1930). Section 301(a), on the other hand, serves to promote industrial peace and responsibility by permitting agreements

between labor organizations and employers to be enforced in federal court. Textile Workers Union of America v. Lincoln Mills, 353 U.S. 448, 454-55 (1957). Additionally, Section 301(a) jurisdiction allows the development of a body of labor law that gives consistent and uniform interpretations of labor contract terms. See Local 174, Teamsters v. Lucas Flour Co., 369 U.S. 95, 103 (1962). These important purposes have consistently justified a broad interpretation of Section 301(a). See, e.g., Smith v. Evening News Association, 371 U.S. 195, 199-200 (1962); Seay v. McDonnell Douglas Corp., 427 F.2d 996, 1000-01 (9th Cir. 1970).

Section 301(a) is neither specifically nor implicitly limited in its reach to labor disputes, however defined. Although cases adjudicated under Section 301(a) will often, or usually, involve labor disputes as defined by Norris-La Guardia and the LMRA, a labor dispute is not a

prerequisite for jurisdiction.

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

APPENDIX C

FILED
AUG4 1982
WILLIAM L. WHITTAKER
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF
CALIFORNIA

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PAINTING AND DECORATING CONTRACTORS ASSOCIATION OF SACRAMENTO, INC., a California non-profit corporation,	NO. C-82-3077-WAI
Plaintiff,	COURT'S ORDER AND FINDINGS RE: PLAINTIFF'S APPLICATION FOR PRELIMINARY INJUNCTION
v.	
PAINTERS AND DECORATORS COMMITTEE OF THE EAST BAY COUNTIES, INC., a California non-profit corporation; PAINTING AND DECORATING	

CONTRACTORS OF CALIFORNIA, INC., a California non-profit corporation; PAINTING AND DECORATING CONTRACTORS ASSOCIATION OF NAPA-SOLANO COUNTIES, INC., a California non-profit corporation; PAINTING AND DECORATING CONTRACTORS ASSOCIATION OF THE EAST BAY COUNTIES, INC., a California non-profit corporation; and DISTRICT COUNCIL OF PAINTERS NO. 16, an unincorporated labor organization,

Defendants.

The application of plaintiff for injunctive relief came on for hearing before the Court on July 19, 1982. The Court, having reviewed the documents

filed with it, and having heard the oral argument of counsel, and being fully apprised of the facts, finds that this is a proper case for granting a preliminary injunction, and that unless a preliminary injunction is granted as prayed for, plaintiff and its employer-members will suffer substantial and irreparable injury before this mattr cn be heard on the merits.

AND NOW, having heard oral argument and having considered the declarations, pleadings and briefs filed herein, the Court finds that:

1. The Court has jurisdiction of the subject matter of this action;

2. The imposition of a Non-Member Signatory fee of Seven Hundred Dollars ($700) on employer-members of plaintiff PAINTING AND DECORATING CONTRACTORS ASSOCIATION OF SACRAMENTO, INC., ("SACRAMENTO ASSOCIATION") for renewal of their Shop Cards for the period of July 1, 1982 through June 30, 1983, in addition to the Shop Card fee of Fifty Dollars ($50), and the removal of

the SACRAMENTO ASSOCIATION'S two representative delegates from the PAINTING AND DECORATORS JOINT COMMITTEE OF THE EAST BAY COUNTIES, INC., ("JOINT COMMITTEE") and the refusal of the JOINT COMMITTEE to allow the SACRAMENTO ASSOCIATION delegates to participate as voting members in the meetings and activities of the JOINT COMITTEE, prior to a hearing of this case on the merits, will result in irreparable injury, loss, and damage to the SACRAMENTO ASSOCIATION and its employer-members. If the injunction sought by the SACRAMENTO ASSOCIATION were not granted, there is sufficient evidence to indicate that individual employer-members of the SACRAMENTO ASSOCIATION could be caused to go out of business or to suffer severe economic injury or to terminate their membership in the SACRAMENTO ASSOCIATION, thereby threatening the continued existence of the SACRAMENTO ASSOCIATION;

3. The equities in this case favor granting the preliminary injunction in that the SACRAMENTO ASSOCIATION and

its employer-members would be threatened with immediate and irreparable injury and economic loss if the injunction were denied; while, on the other hand, if the injunction is granted, there would not be corresponding irreparable injury or economic loss to defendants JOINT COMMITTEE, PAINTING AND DECORATING CONTRACTORS OF CALIFORNIA, INC., and PAINTING AND DECORATING CONTRACTORS ASSOCIATION OF NAPA-SOLANO COUNTIES, INC., that cannot be protected against the posting of a bond by plaintiff;

4. This is not a labor dispute within the meaning of the Norris-La Guardia Act, 29 U.S.C. Section 101 et seq.;

5. There is no mandatory grievance procedure to be exhausted in this case;

6. Plaintiff SACRAMENTO ASSOCIATION is a signatory to the Collective Bargaining Agreement;

7. The employer-member of the plaintiff SACRAMENTO ASSOCIATION are parties to the Collective Bargaining

Agreement by virtue of their membership in plaintiff SACRAMENTO ASSOCIATION, and are entitled to renew their Shop Cards upon payment of Fifty Dollars ($50);

8. The plaintiff SACRAMENTO ASSOCIATION need not be affiliated with the PAINTING AND DECORATING CONTRACTORS OF CALIFORNIA, INC.;

9. SACRAMENTO ASSOCIATION has presented evidence demonstrating the likelihood of its prevailing on the merits of this case;

NOW, THEREFORE, IT IS ORDERED:

A. That the JOINT COMMITTEE, its officers, agents, employees, and voting members, and all persons acting in concert with it and under its direction and on its behalf pending the determination of this action, be enjoined (1) from refusing to allow the SACRAMENTO ASSOCIATION delegtes to sit on and to participate as voting members in the meetings and activities of the JOINT COMMITTEE: (2) from refusing to renew the Shop Cards of the employer-members of the SACRAMENTO ASSOCATION, upon payment of

Fifty Dollars ($50) to the JOINT COMMITTEE from each employer-member; and (3) from threatening to take any action to disqualify the Shop Card of any employer-member of the SACRAMENTO ASSOCIATION or any action to enforce any alleged "obligations" of the such employer-members to pay any sum other than Fifty LDollars ($50) to the JOINT COMMITTEE for renewal of their Shop Cards;

B. That the STATE COUNCIL and the NAPA-SOLANO ASSOCIATION, pending the determination of this action, be enjoined and restrained from attempting to induce employer-members of the SACRMENTO ASSOCIATION to drop their membership in the SACRAMENTO ASSOCIATION and to affiliate with the NAPA-SOLANO ASSOCIATION on the basis that if they fail to do so, they will be and become "non-member signatories" under the Agreement.

C. Plaintiff shall post a bond

in the amount of Forty Thousand Dollars ($40,000).

DATED: 8/4/82

WILLIAM A. INGRAM
United States District Judge

No. 83-1090

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1983

THE PAINTERS AND DECORATORS JOINT COMMITTEE EAST BAY COUNTIES, INC.
Petitioner,

vs.

THE PAINTING AND DECORATING CONTRACTORS OF SACRAMENTO, INC., a California non-profit corporation,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Does a District Court, after expressly finding that a joint labor-management committee ("joint committee") did not act as an adjudicatory body under a collective bargaining contract which contained no arbitration/grievance procedure, have jurisdiction under Section 301(a) of the Labor Management Relations Act, 29 U.S.C. §185(a) to determine whether the acts of the joint committee were in breach of the contract?

Parties Below and Affiliates of Respondent

Pursuant to Supreme Court Rule 28.1, Respondent states that although a corporation there are no parent companies, subsidiaries or affiliates.

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The Painting and Decorating Contractors Association of Sacramento, Inc., a California non-profit corporation (hereinafter "Sacramento Association"), respectfully submits this brief in opposition to the petition for writ of certiorari to the United States Court of Appeals for the Ninth Circuit filed herein by the Painters and Decorators Joint Committee of the East Bay Counties, Inc. (hereinafter "Joint Committee").

I

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 707 F.2d 1067 (9th Cir. 1983) (Appendix A of Petition). The opinion of the Court of Appeals denying Petitioner's Petition for Rehearing and rejecting Petitioner's Suggestion for Rehearing en banc is reported at 717 F.2d 1293 (9th Cir. 1983) (Appendix B of Petition). The preliminary injunction granted by the Northern District Court of California from which Petitioner's appeal was originally taken is found at Appendix C of the Petition.

II

JURISDICTION

The jurisdictional requisites are accurately set forth in the Petition.

III

STATUTE INVOLVED

The pertinent statute involved is Section 301(a) of the Labor Management Relations Act, 29 U.S.C. §185(a), which provides:

> "Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Chapter, or between any such labor organizations, may be brought in any District Court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

IV

STATEMENT OF THE CASE

The Parties

Respondent is a multi-employer trade group consisting of painting and decorating

contractors in a six-county area of Northern California. Respondent and two other multi-employer trade groups, the Painting and Decorating Contractors Association of Napa-Solano Counties, Inc. (hereinafter "Napa-Solano Association") and the Painting and Decorating Contractors of the East Bay Counties, Inc. (hereinafter "East Bay Association"), are and at all times relevant to this action were signatories to a collective bargaining agreement (hereinafter "the Agreement") with the District Council of Painters No. 16 (hereinafter "District Council").

The Agreement provides for the establishment of the Joint Committee to, among other things, administer and enforce the Agreement. The Joint committee is a California non-profit corporation, consisting of two representatives from each of the three signatory employer associations and representatives from the District Council. One of the primary functions of the Joint Committee is to issue shop cards to employers indicating that the employer is a party to the Agreement and is thus observing the terms and conditions thereof.

Employers who are members of one of the three signatory employer associations (including at all times the Sacramento Association) are considered "member signatories" for purposes of receiving a shop card and are charged Fifty Dollars ($50.00) per year for their shop card. However, the Agreement does allow employers who are not members of one of the three signatory employer associations to become parties to the Agreement and to obtain a shop card. Such employers are designated by the Agreement as "non-member signatories" and in order to obtain a shop card must sign a copy of the Agreement and pay the shop card fee of Fifty Dollars ($50.00) per year in addition to the equivalent amount of yearly chapter dues paid by members of one of the three signatory employer associations in the area in which the employer does business.

From 1968 to the present, the employer-members of the Sacramento Association have been, themselves, parties to the successive bargaining agreements by virtue of their membership in the Sacramento Association. These employer-members have,

accordingly, been issued shop cards by the joint committee upon payment of the Fifty Dollar ($50.00) shop card fee established in the Agreement.

The Painting and Decorating Contractors of California, Inc., (the "State Council"), is a trade association consisting of employers in the painting and decorating trade throughout California. The State Council is not and never was a party to the Agreement.

The Dispute

On January 22, 1982, the Sacramento Association, by a majority vote of its employer-members, decided to withdraw its membership in the State Council. In retaliation for this action, the State Council and later the joint committee launched a campaign to cause the employer-members of the Sacramento Association to terminate their membership in that organization.

In April, 1982, the State Council and the Napa-Solano Association wrote to the employer-members of the Sacramento Association indicating that because the Association had withdrawn from the State

Council, all of the members of the Sacramento Association had to rescind the action taken by their association, affiliate with the Napa-Solano Association (whose territory had just unilaterally been expanded to include the area of the Sacramento Association), or accept the status of a non-member signatory under the Agreement. Also, in April, 1982, the joint committee denied the two representatives from the Sacramento Association participation in the regular monthly meetings of the committee, a right conferred by the Agreement. Further the Joint Committee advised the employer-members of the Sacramento Association that unless they joined the Napa-Solano Association they would be required to pay for renewal of their shop cards Seven Hundred Fifty Dollars ($750.00) (the Fifty Dollar shop card fee plus an additional Seven Hundred Dollar ($700.00) membership charge).

The Joint Committee took this action even though the Agreement does not contain any provision which requires the three signatory employer associations to affiliate with the State Council as a condition

to enjoy the benefits of the Agreement and signatory employer status.

The District Court Action

On June 15, 1982, the Sacramento Association filed suit in the Northern District of California under Section 301 of the Labor Management Relations Act, 29 U.S.C. ¶185, naming the joint committee, the District Council, the Napa-Solano Association, the East Bay Association and the State Council as defendants.

The gravamen of the complaint is that there is nothing in the Agreement which conditions member-signatory status on being affiliated with the State Council and that the Joint Committee breached the Agreement by refusing to renew the shop cards of employer-members upon payment by them of the fifty dollar ($50.00) shop card fee, and by denying representatives of the Sacramento Association their participatory rights on the Committee

On July 19, 1982, the District Court granted the Sacramento Association's request for preliminary injunctive relief in order to maintain the status quo as it existed since 1968 and enjoined the Joint

Committee from requiring the employer-members of the Sacramento Association to pay Seven Hundred Fifty Dollars ($750.00) for renewal of the shop cards for the period July 1, 1982 through June 30, 1983, and also enjoined the Joint Committee from refusing to allow the Sacramento Association's two delegates from participating as voting members in the Joint Committee.

The Express Findings of the District Court

The District Court made certain express findings relevant to Petitioner's action before this Court, namely, that Respondent's action did not involve a labor dispute within the meaning of the Norris-LaGuardia Act, 29 U.S.C. §101, et.seq., and that there was no grievance arbitration procedure contained in the Agreement relating to the dispute. There was no evidence presented by any of the parties before the courts below that the Joint Committee in taking the action described herein acted as an adjudicatory body within the framework of a grievance or arbitration procedure. In fact, the Joint Committee did not perform in such a capacity, did not arbitrate any dispute and did

not adjudicate any facts.

V

REASONS WHY THE PETITION SHOULD BE DENIED

All Of The Decisions Cited By Petitioner Are Factually Distinguishable And Therefore Create No Conflict Among The Circuits On An Issue Of Law

The issue in the present case is uniquely narrow and arises out of a strictly parochial dispute involving parties to a collective bargaining contract, and does not involve significant legal issues of any importance to labor or management within the area of federal labor law. Moreover, the case does not in any sense broadly concern the meaning of Section 301, nor does it involve any significant questions concerning the jurisdiction of District Courts under that section.

Petitioner, however, has strained to fabricate what it claims to be a significant issue involving conflicting federal labor law policies. Petitioner for the first time advances the argument that the Joint Committee acted "as an adjudicatory body, just like an arbitration panel" (Petitioner's brief, page 6), and is thus somehow not subject to actions brought

under Section 301. Petitioner makes this argument even though there was absolutely no evidence before the courts below that the Joint Committee acted as an adjudicatory body.

In fact, in its opposition to Respondent's application for preliminary injunctive relief before the District Court, Petitioner argued that Respondent failed to exhaust a contractual grievance procedure by failing to take its dispute to the Joint Committee for arbitration. The District Court expressly found that the Agreement did not contain an arbitration/grievance procedure clause applicable to the dispute. This express finding by the District Court was upheld on appeal by the Ninth Circuit. In spite of these findings, Petitioner nevertheless now argues that the Joint Committee acted as an adjudicatory body, contrary to the position which it took in the courts below. (Clearly, the contractual obligation of the Joint Committee to issue cards is neither an arbitral nor an adjudicatory function).

Based upon the erroneous factual premise that the Joint Committee acted as

an "arbitrator" or as an adjudicatory body, Petitioner attempts to manufacture a conflict by arguing that this Court has promoted the arbitral process, while at the same time, it has limited Section 301 suits to "parties" to collective bargaining agreements. Accordingly, Petitioner argues that Section 301 jurisdiction should not be extended to non-signatories performing arbitral functions. This argument has no application whatsoever to this case and raises a "straw man" not present here. As demonstrated above, the Joint Committee in this case was not performing an adjudicatory or arbitral function in connection with the matters in dispute.

The cases cited by Petitioner, Teamsters Local No. 30 v. Helms Express, Inc., 591 F.2d 211 (3d Cir. 1979) and Ramsey v. Signal Delivery Service, Inc., 631 F.2d 1210 (5th Cir. 1980), are factually and legally distinguishable from the instant case and pose no conflict.

In Teamsters Local No. 30, supra, the complaint brought by the union against the Joint Committee was not for breach of the collective bargaining contract against the

party charged with violating it. Instead, it was an action brought by the union and employee against the committee to set aside an arbitration award rendered by the Joint Committee which the parties had agreed would be final and binding. The committee in that case was created and designed to arbitrate disputes which could not be settled under the contract's elaborate and detailed grievance procedure. The committee was thus an adjudicatory body. The union's and the employee's suit in district court to set aside the final arbitration award was based upon the ground that the committee had breached its duty of fair representation. However, the appellate court found that the committee did not owe a duty of fair representation, since it was a quasi-judicial body, and that the dispute was not one between the parties to the collective bargaining contract. Instead, the court found that it was a dispute between the union and an arbitral body which had performed an act consistent with the collective bargaining contract.

In the instant case, however, the Joint Committee itself breached its

obligations under the collective bargaining contract. The Committee was not acting as a neutral arbiter in refusing to issue the shop cards; instead it breached its contract-created obligation by refusing to do so. See Wilkes-Barre Publishing Company v. Newspaper Guild Local 120, infra.

Moreover, in Teamsters Local No. 30, supra, the union and the employee only filed suit against the Joint Committee. This again is in contrast to the instant case, where Respondent's complaint was filed against all of the signatory parties to the contract for declaratory relief as to each party's rights and obligations under the Agreement, including the rights and obligations of the Joint Committee.

Likewise, Ramsey v. Signal Delivery Service, Inc., supra, is also factually distinguishable from the instant case. There, the plaintiff employees merely alleged that the defendants, including the Joint Committee, conspired to wrongfully discharge them. The district court granted the defendants' motion to dismiss because, among other reasons, it was unopposed. In upholding the lower court, the Fifth

Circuit held that the dismissal was proper as to the Joint Committee on the ground that it was not a proper and legal entity (631 F.2d at 1212). While there were no facts stated in that case to indicate precisely the composition, purpose or role of the Joint Committee, it is clearly distinguishable from the instant case for the reasons stated. In the case before the court, the Joint Committee is a legal entity, a California non-profit corporation, and was intricately bound up with the administration and enforcement of the Agreement.

All of the other cases cited by Petitioner in support of its position that Section 301 jurisdiction cannot be extended to joint committees who are not themselves signatories to the agreements alleged to have been breached are inapposite to the facts of the instant case. As the Ninth Circuit in its opinion below pointed out at 707 F.2d 1071, fn. 3:

> "Despite some broad language in those cases stating that non-signatories to the allegedly breached contract are never

> appropriate parties to a Section 301(a) action, the non-signatory parties there were dismissed because the determination of their liability was not focused upon nor governed by the terms of the contract alleged to have been breached, a jurisdictional prerequisite of Section 301(a). Here, since the question of the joint committee's liability is to be determined by the District Court's interpretation of the agreement, the present case is clearly factually distinguishable from the cases cited above, and thus the reasoning behind those decisions is inapposite." (emphasis supplied)

In light of the foregoing, Petitioner has not demonstrated that there is a conflict among the circuits caused by the decision below, and has failed to articulate any significant legal issue warranting this Court's attention.

This Court Has Already Decided The Issue Raised By the Petition In A Manner Consistent With The Opinion Of The Courts Below

Section 301(a) confers broad subject matter jurisdiction to federal courts where the nature of the action is for violation of a collective bargaining contract between an employer and a labor organization representing employees in an industry affecting commerce. There is no requirement in the statute itself or elsewhere that the parties to a federal court action under Section 301(a) must be limited only to the signatory parties to the contracts alleged to have been breached.

This Court has declared that cases involving breach of collective bargaining contracts must be decided in accordance with a uniform body of federal statutory and common law. See, for example, Textile Workers Union v. Lincoln Mills, 353 U.S. 448 (1957); Local 174, Teamsters, Chauffers, Warehousemen & Workers of America v. Lucas Flour Company, 369 U.S. 95 (1962); and Smith v. Evening News Association, 371 U.S. 195 (1962), where it was held at 371 U.S. 199, 200:

"Textile Workers v. Lincoln Mills, 353 U.S. 448, of course, has long since settled that §301 has substantive content and that Congress has directed the courts to formulate and apply federal law to suits for violation of collective bargaining contracts. There is no constitutional difficulty and §301 is not to be given a narrow reading. . .

"The same considerations foreclose respondent's reading of §301 to exclude all suits brought by employees instead of unions. The word 'between' it suggests, refers to 'suits' not 'contracts,' and therefore only suits between unions and employers are within the purview of §301. According to this argument, suits by employees for breach of a collective bargaining contract would not arise under §301 and would be governed by state law, if not pre-empted. . . Neither the language and structure of §301 nor its legislative history requires or persuasively

> supports this restrictive interpretation. . ." (emphasis supplied)

Consistent with this Court's decisions, the Ninth Circuit in Rehmar v. Smith, 555 F.2d 1362 (9th Cir. 1976), held at 1366:

> "Section 301 jurisdiction is not dependent upon the parties to the suit but rather the nature of the subject matter of the action. Jurisdiction exists as long as the suit is for violation of a contract between a union and an employer even if neither party is a union or an employer. Alvarez v. Erickson, 514 F.2d 156, 162 (9th Cir.), cert. denied 423 U.S. 874 (1975); see, Smith v. Evening News Association, 371 U.S. 195, 200-201."

In Rehmar, supra, a widow of a union member and a trustee of the pension fund were held to be proper parties under §301, although neither was a signatory to the underlying collective bargaining agreement.

See also, Stelling v. International Brotherhood of Electrical Workers, etc., 587 F.2d 1379 (9th Cir. 1978), and Wilkes-Barre Publishing Company v. Newspaper Guild Local 120, 647 F.2d 372 (3d Cir. 1981), cert. denied, 454 U.S. 1143, 102 S.Ct. 1003, 71 L.Ed. 295 (1982), where the court stated that so long as the obligation sought to be enforced has its source in the provisions of the collective bargaining agreement, remedies for its enforcement must be available under §301(a) in suits other than on the contract itself and against the parties thereto.

The signatory parties to the Agreement in this case contractually agreed to create the Joint Committee. Since the parties to the agreement administered and enforced the contract through the Joint Committee, itself a creature of the Agreement, it is unthinkable that the Joint Committee is not a proper party under Section 301. Though the Joint Committee may not be a "signatory" to the collective bargaining contract in terms of not having actually signed its name to the Agreement, it certainly has many, if not all, of the

attributes of a signatory party, and its rights and responsibilities were defined and limited by the Agreement.

VI

CONCLUSION

For the reasons stated, the Petition for Writ of Certiorari should be summarily denied. In this case the Joint Committee was not acting as an arbitral or adjudicatory body, and did in fact breach its obligations under the collective bargaining agreement. Accordingly, the cases cited by Petitioner offer no support for its position. Moreover, there is no real dispute among the circuits and the issue involved herein is a narrow one, not involving significant issues of federal labor law.

DATED: March 2, 1984

Respectfully submitted,

By Robert C. Nicholas
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